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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,597	10/01/2003	Dominic F. DeLaquil	DELD101	8229

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EXAMINER	
SHAPIRO, JEFFERY A	

ART UNIT	PAPER NUMBER
3653	

DATE MAILED: 08/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/677,597	DELAQUIL, DOMINIC F.	
	Examiner	Art Unit	
	Jeffrey A. Shapiro	3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *8/16/06*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-17* is/are rejected.

7)☒ Claim(s) *15* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 15 is objected to because of the following informalities: in line4, the word "and" before "indicator" should be "an". Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, at lines 3-5, recites the phrase "which includes one or more diet indicators for each food selection that indicate which of several diet and nutrition plans said food selection may be prepared for compliance."

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Brown et al (US 6,859,215 B1).

As described in Claims 1-14, Brown discloses a menu (62, 64, 66, 68, 72, 74, 76, 82, 94 or 98) which have indicators for indicating adherence to various diets (such as Kosher, Vegan Heart Healthy or Organic. See figures 4, 5 and 6a-c, which allows a customer to choose ingredients to be compliant with a particular diet plan, for a restaurant kitchen to prepare. See also figure 2, elements 36, 46 and 49 and col. 5, lines 3-40. Further regarding Claim 14, note col. 5, lines 48-67 and col. 6, lines 1-10 that describes listing diets on separate menus with compliance to a particular diet, with various items distinguished from others. For example, in col. 5, lines 65-67, items that do not satisfy the criteria of a particular diet or preference are "graphically distinguished."

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Tsai et al (US 6,016,741).

With regards to Claim 17, Brown discloses the menu generating system described above. Brown further discloses a menu system that incorporates customer preferences with regards to food preparation techniques. See col. 6, lines 38-42.

Regarding Claim 15, Brown does not expressly disclose, but Tsai discloses an electric grill, also known under the trademark "the George Foreman Grill", for preparing meats/fish such that fats naturally drain away from said meat/fish. See Abstract of Tsai.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to have used Tsai's electric grill having grease drain-off capability in a kitchen that services customers using Brown's menu system.

The suggestion/motivation would have been to provide an option for making meats more "heart healthy" by draining away excess fats. See again, Tsai's abstract and Brown's figure 4, noting the column "heart smart" in row (62).

Regarding Claim 16, it would have been obvious to one of ordinary skill to have trained restaurant staff in the use of the menu system and the various diet plans and preferences that are available. The suggestion/motivation would have been to better enable customers to work with the menu and to choose food items that better fit their nutritional goals.

Response to Arguments

8. Applicant's arguments filed 8/16/06 have been fully considered but they are not persuasive. Applicant asserts that the limitations added to Independent Claims 1, 5, 8 and 15 concerning presenting a menu at the time of ordering is not found in Brown. However, Brown discloses that a customer presents preferences, after which the computer presents a menu for the customer to choose items. See col. 5, lines 7-15. Brown discloses at col. 5, lines 16-18 that "when no food preferences are designated, a food menu of all food menu items without food preference designation may be

provided." In other words, the menu is provided prior to the ordering of the items. Items have to be communicated before ordering so that the customer can choose his selections and the order can then be placed. Also note that Independent Claim 1, for example, only requires a menu presented to a customer at ordering that indicate which of several diet and nutrition plans a food item may be used with. Such indication is read in its most reasonable broad interpretation. In light of such a reading of the term "indicate", Brown discloses a menu at figure 4 which describes the ingredients in one column and whether said ingredients are allowed to be included in a particular diet such as kosher or vegan, in the columns at the right. This structure is considered to be an "indication" through the presentation of a "no" or "yes" indicator next to the ingredient as to the diet the ingredient is allowed to be used for. Therefore, Brown in considered to meet the limitations of Applicant's claims as currently amended.

Conclusion

9. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Shapiro whose telephone number is (571)272-6943. The examiner can normally be reached on Monday-Friday, 9:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick H. Mackey can be reached on (571)272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JAS

PATRICK MACKEY
PRIMARY EXAMINER

August 24, 2006